IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

CRL.A.No. 330 of 2006()

SC.360/2001 of IIIADDL. SESSIONS COURT (ADHOC), FAST TRACK COURT NO.I THRISSUR

CP.37/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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APPELLANT/ACCUSED:

CHANDRAN, S/O.THAIPARAMBIL KRISHNAN,
THAZEKKAD, ALLOR,
THRISSUR (NOW IN JAIL).

BY ADVS. SRI.PROMY KAPRAKKATT
SRI.K.N.ABHILASH

RESPONDENT/COMPLAINANT:

THE STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER IN CRL. M.A. NO.1479 OF 2006 IN CRL. APPEAL NO. 330 OF 2006.

DISMISSED

5.9.2007 Sd/-(K.THANKAPPAN, JUDGE)

K.THANKAPPAN, J.

CRL. APPEAL NO. 330 OF 2006

Dated this the 5th day of September, 2007

JUDGMENT

This appeal is filed against the judgment in S.C. No.360 of 2001 on the file of the III Additional Sessions Court (Ad hoc) Fast Track Court No.I, Thrissur. The appellant faced trial for the offences punishable under Sections 307 and 498A I.P.C.

2. The prosecution case against the appellant - accused was that on 14.8.1997 at 7.30 a.m. at the Panchayat road in Thazhekkad village, Kallettumkara desom, he inflicted stab injuries on the back and right elbow of his wife (PW.1) with the intention to cause her death. To prove the case against the accused, the prosecution examined PWs.1 to 12 and produced Exts.P1 to P17 as well as MOs.1 and 2. On the side of the defence, Ext.D1 was produced, but no witness was examined. On closing the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. He denied the prosecution allegations and stated that the case was foisted against him as there arose a quarrel between him and the husband

of PW.1's sister regarding the illegal connection of his wife. However, relying on the evidence adduced by the prosecution, the trial court found the appellant guilty under Sections 307 and 498A I.P.C., convicted him thereunder and sentenced him to undergo rigorous imprisonment for four years for the offence under Section 307 I.P.C. and rigorous imprisonment for two years for the offence under Section 498A I.P.C. The sentences were ordered to run concurrently. Set off was also allowed under Section 428 Cr.P.C.

3. Heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant - accused has raised the following contentions in challenging the judgment of the trial court: (i) the trial court ought not to have believed the evidence of PWs.1 to 3, they being the injured and her close relatives, (ii) the trial court ought to have taken into account the fact that the medical evidence did not prove that the appellant committed offence under Section 307 I.P.C. as PW.7, the doctor who issued Ext.P6 wound certificate did not support the prosecution case that the appellant inflicted injuries on the body of PW.1, (iii) the case set up by the appellant when questioned under Section 313

Cr.P.C. was not considered properly by the trial court and (iv) the punishment awarded is excessive.

5. It is seen that the appellant was convicted by the same trial court in S.C. No.205 of 2004 for offences punishable under Sections 324 and 307 I.P.C. The allegation in that Sessions Case was also that the appellant had inflicted two stab injuries on his wife on 10.1.2002. The trial court after finding the appellant guilty of the above charges sentenced him to undergo rigorous imprisonment for two years for the offence under Section 324 I.P.C. and rigorous imprisonment for four years and to pay a fine of Rs.10,000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of one year for the offence under Section 307 I.P.C. In this context, learned counsel appearing for the appellant submits that this Court may invoke the provisions of Section 427 Cr.P.C. while considering the judgment of the trial court in this case.

6. The trial court mainly relied on the evidence of PWs.1 to 3 to find the appellant guilty of the offences charged against him. PW.1 was the injured. She deposed before the trial court that her marriage with the accused was solemnised on 12.9.1993 and that at the time of the incident she had one child. PW.1 further stated that the accused used to quarrel

with her and ill treated her as a result of which she had to leave his house on several occasions. She further stated that the accused used to assault her doubting her chastity and even threatened to kill her and that she used to take shelter in the nearby bushes. This witness also stated that two or three days prior to the date of the incident she had left the house of her husband and was residing with her sister and that she was on her way to the cashew factory where she was working when the accused came out of the bushes where he was hiding and stabbed her from behind. She further stated that PW.2 her sister who was with her at the time of the incident caught hold of the accused, but the accused pushed her away and inflicted more injuries on her. PW.1 further stated that she was taken to the hospital by PW.3, the husband of PW.2.

7. The evidence of PW.1 is fully corroborated by PW.2, the elder sister of PW.1. She had clearly narrated the incident and the trial court found that the evidence of PWs.1 and 2 can be accepted. PW.3, the husband of PW.2 stated that he reached the scene of occurrence on hearing the cries of PWs.1 and 2 and that he saw PW.1 with bleeding injuries. This witness also stated that PW.1 was taken to the Irinjalakuda Taluk Head Quarters Hospital and then to the Medical College Hospital, Thrissur. PW.4 was examined as an occurrence witness. He did not

support the prosecution case and was declared hostile. PWs.5 and 6 were examined to prove the scene mahazar and the seizure mahazar respectively. PW.7 was the doctor who had treated PW.1 and issued Ext.P6 wound certificate. PW.8 was the Village Officer. Thazhekkad who proved Ext.P8 sketch. PWs.9 to 12 conducted investigation of the case. PW.12 also filed the final charge. The trial court also placed reliance on the evidence of PW.7. PW.7 deposed before the trial court that he had examined PW.1 on 14.8.1997. The following injuries are noted in Ext.P6 wound certificate issued by PW.7:

> (1)5 x 0.5 x 2 cm muscle deep on the back of (L) side of chest wall at the level of T12 spine.
>
> (2)2 x 0.5 x 1 cm muscle deep at the level of T7 spine on the back of chest wall (L) side.
>
> (3)Incised wound 2 x 0.5 x 2 cm muscle deep on the back of middle of (R) upper arm.
>
> (4)Incised wound 5 x 3 x 0.5 cm. muscle deep on the lateral aspect of middle of (R) upper arm."

This witness stated that PW.1 was admitted in the hospital on 14.8.1997 and discharged on 23.8.199. He further stated that the injuries were stab injuries and that injury Nos.1 and 2, if unattended, could be fatal. He also stated that injury No.2 penetrated into the chest cavity and there was

profuse bleeding from that injury which, if unattended, was sufficient to cause death. When a question was put to this witness in cross-examination as to whether the injuries noted on the body of PW.1 could be caused due to fall on sharp edged objects, he answered that it was unlikely.

8. The question to be considered in this appeal is whether the judgment of the trial court is justifiable in the light of the contentions raised by the learned counsel appearing for the appellant.

9. The trial court considered the evidence of PW.7 and Ext.P6 wound certificate and concluded that the appellant inflicted injury Nos.1 and 2 with the knowledge that those injuries would cause the death of PW.1. The trial court also took into account the fact that the appellant was hiding in the bushes and waiting for PW.1. The action of the appellant would show that he had the intention to cause the death of PW.1. Hence, the contention of the learned counsel appearing for the appellant that the trial court committed serious error in believing the evidence of PWs.1 to 3 is not sustainable. The trial court also accepted the evidence of PW.4 who had stated that when he saw PW.1, she was injured.

10. The next question to be considered is whether the injuries found

on the body of PW.1 would attract an offence under Section 307 I.P.C. It is clear from the evidence of PW.7 and Ext.P6 would certificate that the appellant had the intention to inflict such injuries on the body of PW.1 which would cause her death. The trial court accepted the evidence of the police officers who had conducted investigation of the case and questioned the witnesses. Even the non-recovery of the weapon is not a reason to disbelieve the evidence of the prosecution witnesses in the light of the evidence of PW.7. In the above circumstances, the finding of the trial court that the appellant committed offences under Section 307 and 498A I.P.C. is perfectly justifiable and requires no interference.

11. The next point to be considered is whether the sentence awarded against the appellant is excessive. The marriage between the appellant and PW.1 was solemnised in the year 1993 and two children were born in the wedlock. It appears that the appellant entertained a doubt regarding the chastity of PW.1. From the evidence adduced and the suggestions put to the witnesses, there is no reason to come to the conclusion that the doubt entertained by the appellant is sustainable. It is also revealed that on several occasions, the relatives of the appellant and PW.1 tried to settle their quarrel and that some cases are pending between the parties before the Family Court. It has also come out in evidence that

the appellant had on a previous occasion tried to cause the death of PW.1. In the above circumstances, this Court is of the view that the punishment awarded by the trial court is not at all excessive.

12. Yet another point to be considered is whether this Court can exercise the discretion contemplated under Section 427 Cr.P.C. in the case of the appellant. Section 427(1) Cr.P.C. reads as follows:

> "**Sentence on offender already sentenced for another offence**.--(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence."

A reading of the above provision would show that consecutive suffering of imprisonment is the normal rule and concurrent suffering of the sentences is only an exception which is left to the discretion of the court. While exercising such discretion, this Court should take into account the entire facts and circumstances under which the person is convicted in both the cases. Evidently it is proved that the appellant had been entertaining a

doubt regarding the chastity of his wife, PW.1 and had the intention to do away with her. However, it is seen that he has two children, now aged above 10 years. Further, there is no one to support PW.1 other than her close relatives. It is also reported that the sufferings undergone by the appellant has reformed him to a great extent. Considering these aspects, this Court is of the view that the benefit under Section 427 Cr.P.C. can be allowed to the appellant.

13. In the result, the conviction and sentence ordered against the appellant are confirmed. It is ordered that the substantive sentences awarded by the trial court against the appellant - accused in S.C. No.360 of 2001 shall run concurrently with the substantive sentences awarded against him in S.C. No. 205 of 2004.

The Crl. Appeal is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

SEPTEMBER, 2007